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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,589	03/29/2004	Eric Tomasetti	TR-6132 (BXTC 4021)	2100
7590 02/12/2008				
Mr. Joseph B. Barrett Baxter Healthcare Corporation One Baxter Parkway, DF-3-2W Deerfield, IL 60015				
EXAMINER				
MCCLELLAND, KIMBERLY KEIL				
ART UNIT		PAPER NUMBER		
1791				
MAIL DATE		DELIVERY MODE		
02/12/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/811,589

Applicant(s)

TOMASETTI ET AL.

Examiner

KIMBERLY K. MCCLELLAND

Art Unit

1791

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 November 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.

/Philip C Tucker/
Supervisory Patent Examiner, Art Unit 1791

/K. K. M./
Examiner, Art Unit 1791

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments are primarily based on the lack any single reference anticipating the entire invention as currently claimed. Applicant is reminded the current rejection of claims 1-24 are obviousness rejections under 35 U.S.C. 103, not anticipation under 35 U.S.C. 102. The test of obviousness is not express suggestion of the claimed invention in any or all references but rather what the references taken collectively would suggest to those of ordinary skill in the art presumed to be familiar with them. In re Rossetti, 347 F.2d 847, 146 USPQ 183 (CCPA 1965); In re Hedges, 783 F.2d 1038.

As to applicant's argument that Yang does not disclose the limitation of "directing an electromagnetic beam generally toward the location where the axially facing surfaces are in opposed, end-to-end relation for welding the two sections of tubing together at the location", examiner disagrees. Yang's disclosure in paragraph 0068 specifically states directing a laser (i.e. electromagnetic energy) around the tube ends for welding. Applicant's argument that directing the laser "onto" the tube ends does not meet the limitations required by directing a beam "generally" toward the bonding location is not persuasive, because the claim language "generally" includes the tube ends as well as the surrounding area of the tube ends. Furthermore, the weld block and film cited by applicant as defining the term "generally" are not recited in independent claim 1. The language of claim 1 is sufficiently broad to include limitation that do not include any type of film or weld block. Consequently, directing a beam onto the tube ends reads on the current claim language of "directing an electromagnetic beam generally toward the location where the axially facing surfaces are in opposed, end-to-end relation for welding the two sections of tubing together at the location".

As to applicant's argument that Hlavinka fails to disclose a beam of electromagnetic energy, examiner disagrees. The term "beam" is used in the art to describe multiple types of electromagnetic energy, including radio waves. In the absence of any clear definition provided in the specification, the words of the claim must be given their plain meaning. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989). Consequently, the radio frequency energy cited by applicant meets applicant's claimed "electromagnetic beam" limitation.

Applicant also argues Hlavinka fails to disclose an absorption member that transfers heat. Examiner notes the current claim language is not limited to the phrase, "convert energy to heat and transfer that heat to the tube", but instead requires "transferring heat from the energy absorption member to the collapsed tubing section portion by contact therewith". Examiner also notes that by retaining heat during the welding process, the insulating sleeve functions to both absorb energy and transfer that energy to the tubing by contact therewith. Consequently, the insulating sleeve meets the current claim limitations.

Applicant's remaining arguments are based on the dependency of claims 2-17 and 19-24 on independent claims 1 and 18. Therefore, these arguments are not persuasive and the current rejection is maintained.

Continuation of 13. Other: The information disclosure statement filed 11/30/07 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because no statement under 37 CFR 1.97(e) was made. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).